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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

5 In re:

6 USA COMMERCIAL MORTGAGE  
 COMPANY,

7 USA CAPITAL REALTY ADVISORS,  
 LLC,

8 USA CAPITAL DIVERSIFIED TRUST  
 DEED FUND, LLC,

9 USA CAPITAL FIRST TRUST DEED  
 FUND, LLC,<sup>1</sup>

10 USA SECURITIES, LLC,<sup>2</sup> Debtors.

11 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

12 Case No. BK-S-06-10725-LBR  
 Case No. BK-S-06-10726-LBR  
 Case No. BK-S-06-10727-LBR  
 Case No. BK-S-06-10728-LBR<sup>1</sup>  
 Case No. BK-S-06-10729-LBR<sup>2</sup>

13 CHAPTER 11

14 Jointly Administered Under Case No.  
 BK-S-06-10725 LBR

15 **FIRST OMNIBUS OBJECTION OF  
 USACM TRUST TO PROOFS OF  
 CLAIM BASED UPON  
 INVESTMENT IN ASHBY  
 FINANCIAL COMPANY \$7,200,000  
 LOAN; AND CERTIFICATE OF  
 SERVICE**

16 Date of Hearing: March 25, 2008  
 Time of Hearing: 9:30 a.m.

17 The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant  
 18 to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and  
 19 Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an  
 20 order disallowing Proofs of Claim filed by individual investors ("Direct Lenders") against

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<sup>1</sup> This bankruptcy case was closed on October 12, 2007.

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<sup>2</sup> This bankruptcy case was closed on December 26, 2007.



1 USA Commercial Mortgage Company (“USACM”) that are based upon an investment in  
2 the Ashby Financial Company \$7,200,000 Loan (the “Ashby Loan”). This Objection is  
3 supported by the Court’s record and the Declaration of Edward M. Burr in Support of  
4 Omnibus Objections to Proofs of Claim Based Upon the Investment in Ashby Financial  
5 Company \$7,200,000 Loan filed with the Court today (the “Burr Decl.”).

6 **I. INTRODUCTION**

7 1. On about September 1, 2006, the borrower paid off the Ashby Loan in full.  
8 In turn, USACM distributed the proceeds from the Ashby Loan to the Direct Lenders who  
9 invested in the Ashby Loan. The Direct Lenders were thus paid in full, subject to  
10 servicing fees and any other charges under their respective Loan Servicing Agreements  
11 and this Court’s orders, including the Confirmation Order. Accordingly, there is no longer  
12 any basis for a Direct Lender claim against USACM based upon an investment in the  
13 Ashby Loan.

14 2. This Objection seeks to disallow Direct Lender claims that are based entirely  
15 upon an investment in the Ashby Loan. Those claims are listed in **Exhibit A**, attached.

16 **II. JURISDICTION**

17 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
18 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
19 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

20 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
21 and Bankruptcy Rule 3007.

22 **III. BACKGROUND**

23 1. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
24 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital  
25 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
26 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary



1 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
2 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of  
3 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the  
4 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
5 ("Mesirow"), who served as the Chief Restructuring Officer.

6 2. USACM is a Nevada corporation that, prior to the Petition Date, was in the  
7 business of underwriting, originating, brokering, funding and servicing commercial loans  
8 primarily secured by real estate, both on behalf of investors and for its own account.

9 3. That business included the solicitation of individual investors to purchase  
10 fractional interest in loans that USACM originated and then serviced. These investors,  
11 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
12 USACM's bankruptcy case and in this Objection.

13 4. Although USACM serviced and sometimes originated the loans in which the  
14 Direct Lenders invested, generally USACM was not a borrower on these loans.

15 5. On September 14, 2006, the Court entered its Order Setting Deadline to File  
16 Proofs of Claim and Proofs of Interest [Docket No. 1280] (the "Bar Date Order"). The  
17 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
18 the deadline ("Bar Date") for creditors to file proof of claims.

19 6. On September 25, 2006, Debtors served a copy of the Bar Date Order on  
20 their service lists [Docket No. 1358]. All Creditors, including the Direct Lenders, were  
21 served with a copy of the Bar Date order as well [Docket No. 1358].

22 7. On November 6, 2006, a stipulation was filed and an order entered extending  
23 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
24 No. 1729].



1       8. On January 8, 2007, this Court entered its Order Confirming the “Debtors’  
2 Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.  
3 2376] (the “Confirmation Order”).

4       9. Under the Plan, the USACM Trust is the successor to USACM with respect  
5 to standing to seek allowance and disallowance of Claims.

6       10. Under the Plan, unsecured claims of Direct Lenders against USACM are  
7 classified in Class A-5. Allowed Unsecured Claims “shall receive a beneficial interest in  
8 the USACM Trust, and on account of their Allowed Claim may receive a Pro Rata Share  
9 of the assets of the USACM Trust after satisfaction of all Allowed unclassified Claims,  
10 Allowed Class A-1, A-2, and A-3 Claims, and all post-Effective Date fees, costs, and  
11 expenses of implementation of the USACM Plan for USACM and the USACM Trust.”

12      11. The USACM Trust exists as of the Effective Date of the Plan, which was  
13 March 12, 2007. Geoffrey L. Berman is the Trustee.

14      12. **Exhibit A** to this Objection lists Proofs of Claim filed by Direct Lenders that  
15 appear to be based entirely upon an investment in the Ashby Loan. (Burr Decl. ¶ 7.) For  
16 each claim listed, **Exhibit A** identifies the Proof of Claim number, the claimant, the  
17 claimant’s address, and the total amount of the claim. The claims listed in **Exhibit A** are  
18 referred to hereafter as the Ashby Claims. (Burr Decl. ¶ 7.)

19      13. On or about September 1, 2006, the Ashby Loan was paid off in full, as  
20 reflected in USACM’s books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM  
21 processed the payoff and distributed the proceeds to the Direct Lenders on the Ashby  
22 Loan. (Burr Decl. ¶ 8.)

23      14. The Direct Lenders were in turn paid in full, subject to servicing fees and  
24 any other charges under their respective Loan Servicing Agreements and this Court’s  
25 orders, including the Confirmation Order. In general, the Direct Lenders received their  
26 principal and interest on the Ashby Loan, less sums withheld for servicing fees, servicer



1 advances, Prepaid Interest and sums known as the 2% Holdback pursuant to the  
 2 Confirmed Plan. On the Effective Date of the Plan, the Prepaid Interest was applied, a  
 3 portion of the 2% Holdback was applied to the allowed claims of the Direct Lender  
 4 Committee, and the balance paid to the Direct Lenders. (Burr Decl. ¶ 9.)

5       15. Accordingly, the USACM Trust no longer has further obligations to the  
 6 Direct Lenders arising out of the Ashby Loan because, pursuant to USACM's books and  
 7 records, the Ashby Loan has been repaid in full, and the Direct Lenders have received  
 8 such payment. (Burr Decl. ¶ 10.)

#### 9       **IV. APPLICABLE AUTHORITY**

10      1. Under the Bankruptcy Code, any Claim for which a proof of claim has been  
 11 filed will be allowed unless a party in interest objects. If a party in interest objects to the  
 12 proof of claim, the Court, after notice and hearing, shall determine the amount of the  
 13 Claim and shall allow the Claim except to the extent that the Claim is "unenforceable  
 14 against the debtor . . . under any . . . applicable law for a reason other than because such  
 15 claim is contingent or unmatured." 11 U.S.C. § 502(b).

16      2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
 17 § 502(a). This objection is timely under the confirmed Plan, as the deadline for such  
 18 objections has been extended to February 12, 2008, by this Court's orders.

19      3. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
 20 3001(f). However, once an objection to the proof of claim controverts the presumption,  
 21 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
 22 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
 23 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996). The ultimate  
 24 burden of proof as to the validity of a proof of claim "remains at all times upon the  
 25 claimant." *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
 26 1039 (9th Cir. 2000).



## V. OBJECTION TO CLAIMS LISTED IN EXHIBIT A

1. **Exhibit A** attached hereto and incorporated herein by this reference lists the Ashby Claims. The USACM Trust objects to these claims because they are based entirely upon an investment in the Ashby Loan. According to USACM's books and records as reconstructed by Mesriow, the Ashby Loan has been repaid in full, and the Direct Lenders have received such payment, as provided by the applicable Loan Servicing Agreement, this Court's orders and the Confirmation Order.

2. The USACM Trust reserves the right to further object to any and all Claims, whether or not the subject of this Objection, for allowance and/or distribution purposes on any other grounds. The USACM Trust further reserves the right to modify, supplement and/or amend this Objection as it pertains to any Claim or claimant herein.

## VI. CONCLUSION

1. The USACM Trust respectfully requests that the Court disallow in full the claims listed in **Exhibit A**. The USACM Trust also requests such other and further relief as is just and proper.

Dated: February 12, 2008.

## LEWIS AND ROCA LLP

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1 Copy of the foregoing mailed by first class  
2 Postage prepaid U.S. Mail on  
February 12, 2008 to:

3 All parties in interest listed on  
Exhibit A attached.

4  
5 /s/ Renee L. Creswell  
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Renee L. Creswell